

**From:** Jason B Morningstar  
**To:** Microsoft ATR  
**Date:** 1/23/02 8:36am  
**Subject:** Microsoft Settlement

To: Renata B. Hesse  
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U.S. Department of Justice  
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Under the Tunney Act, I wish to comment on the proposed Microsoft settlement.

I feel that the proposed settlement is seriously flawed on a number of grounds, including the fact that Microsoft discriminates against ISVs who ship Open Source applications. The proposed settlement does not address this problem.

To demonstrate my point, read the Microsoft Windows Media Encoder 7.1 SDK EULA, which states:

... you shall not distribute the REDISTRIBUTABLE COMPONENT in conjunction with any Publicly Available Software. "Publicly Available Software" means each of (i) any software that contains, or is derived in any manner (in whole or in part) from, any software that is distributed as free software, open source software (e.g. Linux) or similar licensing or distribution models ... Publicly Available Software includes, without limitation, software licensed or distributed under any of the following licenses or distribution models, or licenses or distribution models similar to any of the following: GNU's General Public License (GPL) or Lesser/Library GPL (LGPL); The Artistic License (e.g., PERL); the Mozilla Public License; the Netscape Public License; the Sun Community Source License (SCSL); ...

Many Windows APIs, including Media Encoder, are shipped by Microsoft as add-on SDKs with associated redistributable components. Applications that wish to use them must include the add-ons, even though they might later become a standard part of Windows. Microsoft often provides those SDKs under End User License Agreements (EULAs) prohibiting their use with Open Source applications. This harms ISVs who choose to distribute their applications under Open Source licenses; they must hope that the enduser has a sufficiently up-to-date version of the addon API installed, which is often not the case.

Applications potentially harmed by this kind of EULA include the competing middleware product Netscape 6 and the competing office suite StarOffice; these EULAs thus can cause support problems for, and discourage the use of, competing middleware and office suites. Additionally, since Open Source applications tend to also run on non-Microsoft operating systems, any resulting loss of market share by Open Source applications indirectly harms competing operating systems.

Please take this into consideration when finalizing the settlement.

Sincerely,

Jason Morningstar

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